



Attorney Docket # 5367-154PUS

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Christian KARNUTSCH et al.

Serial No.: 10/526,214

Filed: September 19, 2005

For: Semiconductor Optical Pumping Device for
Radiation Emission and the Production Method
thereof

Examiner:

Group Art:

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Thomas Langer

Name of applicant, assignee or Registered Representative

Signature

April 17, 2008

Date of Signature

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

RESPONSE TO REQUIREMENT FOR ELECTION
OF SPECIES

SIR:

This paper is submitted in response to the Office Action of March 17, 2008 in which the Examiner requires that applicants "elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable", pursuant to 35 U.S.C §121. The Examiner states that currently no claim is generic, and identifies two (2) listed species.

Applicants submit, however, that since is a National Stage application based on an International Application and was filed under 35 U.S.C. §371, unity of invention (not restriction)

practice is applicable in this case. See MPEP §1893.03(d). Applicants accordingly traverse the improper election requirement set forth in the Office Action.

Applicants believe that claims 1 to 30 currently pending in the instant application meet the requirements for unity of invention under 37 CFR §1.475. Supporting this belief is the lack of any objection to the claims with respect to the requirements for unity of invention, under PCT Rules 13.1 and 13.2, in the examination of the International Application.

Moreover, the Examiner has failed to explain how the various claims pending in the instant application lack unity of invention, as he is *required* to do. As discussed in MPEP §1893.03(d),

“When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no *single general inventive concept*) specifically describing the unique special technical feature in each group.”
[Emphasis supplied]

Thus, applicants contend that the Examiner has, at the very least, failed to make a *prima facie* showing that applicants should be required to select for prosecution less than all of the claims now pending in the application. Such a detailed explanation, as enumerated in the MPEP section quoted above, is requested if the Examiner continues to require that applicant select less than all of the pending claims for prosecution in the instant application.

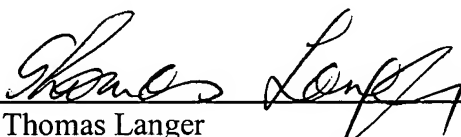
In view of the foregoing, applicants respectfully request that the Examiner reconsider and withdraw the election of species requirement set forth in the Office Action of March 17, 2008, and examine all of the pending claims together in the present application.

Notwithstanding the foregoing, since the Office Action *requires* an election of species in response to the Office Action, applicants provisionally elect the "species" of claims 1-24 for prosecution on the merits, subject to the above-discussed traverse.

Early and favorable consideration in accordance with the foregoing is once more requested.

Any additional fees or charges required at this time in connection with the application may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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